

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS15201-SBz-32A* (03/15)

Short Title: Protect DENR from Co-Applicant Liability. (Public)

Sponsors: Senators Rouzer, East, and Jackson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL
3 RESOURCES AND THE STATE FROM POTENTIAL LIABILITY ASSOCIATED
4 WITH BECOMING A CO-APPLICANT WITH A REGIONAL WATER SUPPLY
5 SYSTEM ON THE FEDERAL APPROVALS NEEDED FOR THE ESTABLISHMENT
6 OR EXPANSION OF A WATER SUPPLY RESERVOIR OR OTHER WATER SUPPLY
7 RESOURCE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
8 COMMISSION.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 143-355.7(e) reads as rewritten:

11 "(e) When the Department has identified the most practicable alternative, a regional
12 water supply system may request that the Department become a co-applicant for all required
13 federal approvals for the alternative identified by the Department. The Department may
14 become a co-applicant when all of the following conditions are met:

- 15 (1) The regional water supply system has acquired or will acquire the property
16 necessary for construction of the water supply reservoir or other water
17 supply resource.
- 18 (2) The local water supply plan shows that the regional water supply system has
19 implemented appropriate conservation measures similar in effect to the
20 measures in comparably sized North Carolina regional water supply systems.
- 21 (3) The regional water supply system has developed and is implementing
22 measures to replace existing leaking infrastructure that is similar in effect to
23 the measures being implemented by comparably sized North Carolina
24 regional water systems.
- 25 (4) The regional water supply system has entered into a contractual agreement
26 with the Department to pay the expenses incurred by the Department as a
27 co-applicant for the project approval.
- 28 (5) The regional water supply system has entered into a contractual agreement
29 with the Department to indemnify, defend, and hold the Department and the
30 State, its officers, employees, agents and assigns harmless from any liability
31 or other costs incurred related to (i) personal injury or injury to real or
32 personal property of any kind, accruing or resulting to any other person or
33 entity in connection with any federal approvals, arising out of the ordinary
34 negligence, willful, wanton, or gross negligence, intentional acts or
35 omissions or unlawful conduct of the regional water supply, its officers,



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1 employees, agents, assigns, or subcontractors, and (ii) any violation or
2 alleged violation of the federal approval or other law or regulation related to
3 federal approval, whether or not caused by the regional water supply. The
4 obligations of the regional water system under this subdivision shall include
5 all fees, costs, penalties, fines, judgments, orders, and other obligations to
6 which the State may be subject or that the State may incur."

7 **SECTION 2.** This act is effective when it becomes law.